

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
 of
 ROTOCOPY, INC.
for redetermination of deficiency
of franchise tax under Article 9-A
of the tax law for 1967 and 1968

Rotocopy, Inc. having filed petition for redetermination of deficiency of franchise tax under Article 9-A of the tax law for the calendar years 1967 and 1968, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York City, on October 28, 1971, before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing Lawrence J. Mittenthal, Esquire, Counsel for the taxpayer, appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Rotocopy, Inc. was incorporated under the laws of New York State on October 15, 1945.

(2) Franchise tax reports were filed for 1967 and 1968 in which the deduction for optional depreciation on qualified property was claimed and the tax was computed on the third alternative base. Taxpayer excluded the deduction for federal depreciation on qualified property from entire net income and subtracted optional depreciation from the third alternative base.

(3) On May 18, 1970, the Corporation Tax Bureau issued notices of deficiency as follows:

1967

Entire net (income) loss	\$ 4,272.34
Add: Officers' compensation (after exemption)	30,902.80
Total	26,630.46
Third alternative base (30% of total)	7,989.14
Add federal depreciation on qualified property	3,141.10
Total	11,130.24
Less optional depreciation on qualified property	6,033.67
Base	5,096.57
Tax at 5-1/2%	280.31
Tax per report	159.38
Deficiency	\$ 120.93

1968

Entire net income	\$ 8,511.62
Add: Officers' compensation (after exemption)	29,474.85
Total	37,986.47
Third alternative base (30% of total)	11,395.94
Add federal depreciation on qualified property	3,741.40
Total	15,137.34
Less optional depreciation on qualified property	6,488.66
Base	8,648.68
Tax at 7%	605.41
Tax per report	219.60
Deficiency	\$ 385.81

(4) Timely petition for redetermination of deficiency was filed claiming that the deduction for federal depreciation should be excluded from entire net income and not from the third alternative base.

(5) Section 210.1 of Article 9-A of the tax law states in part:

"The tax * * * shall be * * * computed * * * on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars * * * and any net loss for the reported year, or on the portion of such sum allocated within the state as hereinafter provided for the allocation of entire net income, subject to any modification required by paragraphs (d) * * * of subdivision three of this section,"

(6) Section 210.3(d) of Article 9-A of the tax law states in part:

"(d) * * *, at the election of the taxpayer there shall be deducted from the portion of its entire net income allocated within the state either or both of the items set forth in subparagraphs one and two of this paragraph, except that only one of such deductions shall be allowed with respect to any one item of property."

"(d)(1) Depreciation with respect to any property * * * not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that entire net income be computed without any deduction for the depreciation or amortization of the same property, * * *."

(7) Instruction 4 on page 3 of form CT-3(1968) states as follows:

"To compute the alternative tax measured by income plus compensation (a) add to the amount of entire net income, all salaries and compensation paid to the officers and stockholders required to be reported in Schedule F, page 2, (b) deduct from such total \$15,000 (* * *) and any net loss for the year, (c) multiply the resulting total by 30%. If you claim a deduction for optional depreciation on qualified New York property, add Federal depreciation and deduct Federal gain (loss) on such property. Apply allocation percentage where applicable. Add N.Y. gain (loss) and deduct optional depreciation on qualified N.Y. property. * * *."

The State Tax Commission hereby

DECIDES:

(A) Section 210.1 of the tax law requires a modification of the third alternative base where a deduction for optional depreciation is claimed.

(B) Instruction 4 of Tax Report Form CT-3 is the proper interpretation of the modification required in the computation of the third alternative tax.

(C) The deficiencies computed in (3) above are hereby affirmed together with interest due in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York
this 21st day of April 1972.

STATE TAX COMMISSION

Norman Gallivan
President

Charles Mawley
Commissioner

Milton Kuersten
Commissioner